

June 15, 2005

TO: Secretary of State's Voting Systems and Procedures Panel  
FROM: Kim Alexander, President, California Voter Foundation  
RE: Diebold's voter verified paper trail equipment and procedures

On June 16, the Secretary of State's Voting Systems and Procedures Panel (VSPP) will consider certification of several Diebold Election Systems, Inc.'s voting equipment components and procedures.

I have reviewed the test reports and procedures, and am writing to bring the California Voter Foundation's (CVF) concerns to your attention. Our first concern is that the manual count language contained in Diebold's draft procedures is unsatisfactory. Secondly, we are concerned about the testing process for Diebold's equipment.

**I. Manual count language in Diebold's draft procedures**

Diebold has supplied the Secretary of State with draft procedures for its TSX voting machine with the voter verified paper audit trail attachment. These procedures require several clarifications to ensure that the voter verified paper trail is used to perform the one percent manual count that is required by California law.

California's manual count law was first enacted in 1965, shortly after software first started being used in punch card voting to tabulate ballots. Election Code Section 15360 requires that:

"During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts should be less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official."

Election Code Section 336.5 provides the following definition for the manual count:

"One percent manual tally" is the public process of manually tallying votes in 1 percent of the precincts, selected at random by the elections official, and in one precinct for each race not included in the randomly selected precincts. This procedure is conducted during the official canvass to verify the accuracy of the automated count.

This "public manual tally" serves as a check of tabulation software to verify machine-tabulated results. With punch card and optical scan systems, a subset of the hard copy ballots are selected at random, then counted by hand in a public and open process, and the results are checked against those generated using the vote tabulation software.

This law has served California voters well for most of the past four decades by ensuring that software glitches, human error or attempted vote fraud do not result in erroneous vote totals. The manual count law provides a form of transparency in our voting process, which is crucial given that the software used to count ballots is proprietary and not open to public inspection.

However, for the past five years the manual count law has been subverted with the introduction of paperless, electronic voting machines. Counties using electronic voting machines do not have an independent audit trail they can use to verify the accuracy of their software vote counts. Instead, and in violation of the manual count law, these jurisdictions have printed out paper ballot images of electronic ballots after the voters have voted and the polls have closed. If an electronic ballot was not properly recorded or stored in the first place, these electronic ballot image printouts will not detect this error, since they originate from the same data source to which they are being compared. This procedure also means that election officials are relying one hundred percent on their vendor's proprietary software to record and count votes.

Fortunately, California's legislature unanimously passed a bill last year, SB 1438, to require that all electronic voting machines produce a voter verified paper audit trail of every electronic ballot cast. The purpose for this paper record is two-fold: to give an individual voter confidence that his or her own ballot was properly recorded; and to give election officials a meaningful audit trail they can use to verify the accuracy of software vote counts and satisfy the manual count law.

Unfortunately, some counties may be hoping to continue the meaningless practice they initiated when electronic voting machines were first introduced in California. The California Voter Foundation strongly urges the VSPP to require

perform the one percent manual tally. Otherwise the voter-verified paper trail is practically meaningless, and the one percent manual tally is totally meaningless. If the paper audit trail that the voter verified is not used to verify the overall election results, then it will be possible for the paper record to reflect one set of votes while the electronic record reflects a different set of votes without ever being detected.

We know elections aren't perfect. We know software is not perfect. There have been plenty of examples of vote counting problems in recent years in California, of glitches and human error occurring. It is inevitable that there will be problems. The real challenge is to ensure our system is transparent and accountable so that when problems inevitably occur they can be detected and corrected.

## **II. Diebold testing process**

CVF is concerned that Diebold's new equipment has not been properly tested by the Secretary of State's office. Recent news articles and documents released by the Secretary of State show that the voter verified paper trail unit Diebold supplied to the State of California for testing was not the same unit supplied to federal labs for testing. This is not the first time that Diebold has supplied different voting system components to state and federal authorities for testing and qualification.

In December 2003, the Secretary of State's office discovered that the TSX had not been federally qualified prior to state certification, as required under California's certification procedures. The Secretary of State's office also discovered that Diebold had installed uncertified versions of hardware or software in all 17 of its California client counties. Even after these problems came to light, Diebold attempted to win state certification of additional components, telling the Secretary of State that those components were in the process of federal qualification, which turned out to be false. According to the Secretary of State's Staff Report on the Investigation of Diebold Election Systems, Inc., published April 20, 2004:

"Less than a month before the March Primary, after repeated assurances to the contrary, this office learned that Diebold was no longer pursuing federal ITA approval of the software and firmware installed on California voting machines. Rather, Diebold had instructed the ITA to test a newer version of both software and firmware." (Page 2).

Based on Diebold's prior practices in California's certification process, this is a company that does not deserve to be given the benefit of the doubt. Why didn't

Diebold, once it had a newer model of its printer unit available, supply that unit to the Secretary of State for testing rather than allow the Secretary of State to continue testing a different unit?

The recent revelations about the testing of Diebold's equipment is another example of Diebold playing fast and loose with California's certification process. Diebold's past transgressions in this area resulted in widespread equipment failure in several California counties during the March 2004 election that left thousands of California voters disenfranchised.

Given the history of this company, it is imperative that the Secretary of State's office guarantee that every step and requirement of the certification process is carefully followed so that voters in our state can have confidence in election results produced from Diebold equipment.

Cc: California Secretary of State Bruce McPherson



**Sent by facsimile to 916.653.3214**  
**and by electronic transmission to [bmcdanno@ss.ca.gov](mailto:bmcdanno@ss.ca.gov)**

June 15, 2005

Secretary of State-Elections Division  
Attn: Bruce McDannold, Voting Systems  
1500 11<sup>th</sup> Street  
Sacramento, CA 95814

**Re: SUPPORT for ES&S AutoMARK Voter Assist Terminal (pending certification)**

Dear Mr. McDannold:

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It is for these reasons that we organized representatives from organizations representing minority language groups, minority communities, people with disabilities, and paper audit trail and security concerns to view the AutoMark machine on June 13<sup>th</sup>.<sup>1</sup> The groups were able to question the ES & S representatives vigorously about all of their various concerns.

I am pleased to report, both on behalf of California Common Cause, and the many groups present, that we were impressed by what we saw. This machine provides a touchscreen interface that gives voters the ability to see the ballot in large print, listen to the ballot through earphones, choose to see and hear their ballot in up to 9 languages, use sip-and-puff accessories, and tilt the screen to accommodate different eye levels. These features make the machine accessible to all voters, particularly voters needing language minority and disability assistance.

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At the same time, because the AutoMark only marks the ballot, but does not tabulate the vote, it provides for the paper audit trail that will ensure greater voter confidence and provide vote security that many organizations have been calling for.

The fact that the ballot is pre-printed with the candidate names and propositions allows voters to have the option of voting on the paper ballot directly if they so choose or in the event of machine malfunction. Additionally, the pre-printed paper ballot is truly verifiable, because it has all candidates and propositions printed on it, can be multi-lingual, and can be fed through the AutoMark for audio confirmation. This makes it superior to many optical scan ballots such as the Ink-a-Vote ballot.

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We continue to offer our assistance and advice on these matters to the Voting Systems and Procedures Panel.

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Kathay Feng  
Executive Director  
California Common Cause



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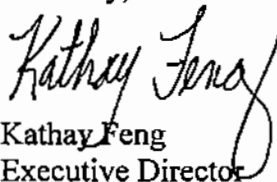
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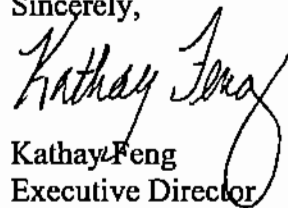
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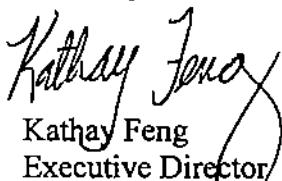
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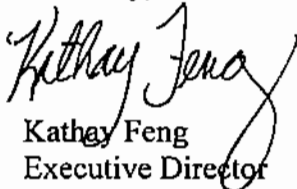
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Dear Mr. McDannold:

On June 13, 2005, California Common Cause was able to view and test the AutoMark Voter Assist Terminal. We write to express our support of this voting machine.

California Common Cause is a non-profit, non-partisan citizens' lobby that works to strengthen governmental accountability and public civic participation. In 2002, we were the lead plaintiffs in litigation that forced California to switch off of punch card voting machines because of high voter error rates, particularly amongst minority voters. The settlement led the way to California's leadership in transitioning to new, more accessible, and more accurate voting machines. Our 40,000 California members are committed to supporting voting technology that ensures voter accessibility as well as vote security.

It is for these reasons that we organized representatives from organizations representing minority language groups, minority communities, people with disabilities, and paper audit trail and security concerns to view the AutoMark machine on June 13<sup>th</sup>.<sup>1</sup> The groups were able to question the ES & S representatives vigorously about all of their various concerns.

I am pleased to report, both on behalf of California Common Cause, and the many groups present, that we were impressed by what we saw. This machine provides a touchscreen interface that gives voters the ability to see the ballot in large print, listen to the ballot through earphones, choose to see and hear their ballot in up to 9 languages, use sip-and-puff accessories, and tilt the screen to accommodate different eye levels. These features make the machine accessible to all voters, particularly voters needing language minority and disability assistance.

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<sup>1</sup> Asian Pacific American Legal Center, California Common Cause, Cal. Election Protection Network, CitizensAct, Protection and Advocacy, Inc., Inglewood Leadership Council, LA Urban League, and So. Cal. Grassroots. Additionally, we have had extensive discussions with California Council of the Blind, National Association of Latino Elected and Appointed Officials (NALEO).

At the same time, because the AutoMark only marks the ballot, but does not tabulate the vote, it provides for the paper audit trail that will ensure greater voter confidence and provide vote security that many organizations have been calling for.

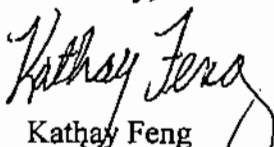
The fact that the ballot is pre-printed with the candidate names and propositions allows voters to have the option of voting on the paper ballot directly if they so choose or in the event of machine malfunction. Additionally, the pre-printed paper ballot is truly verifiable, because it has all candidates and propositions printed on it, can be multi-lingual, and can be fed through the AutoMark for audio confirmation. This makes it superior to many optical scan ballots such as the Ink-a-Vote ballot.

We are pleased to report that the AutoMark has met with general support from groups that have often been pitted on opposite sides of the voting technology debate. There do continue to be some real concerns. Those include: 1) how the ballot for voters with dexterity disabilities can be removed from the AutoMark and put into the ballot box without violating confidentiality, 2) how counties with a large number of languages (as many as 6 plus English) required by the Voting Rights Act will accommodate those languages on the ballot, and 3) how the ballots will be tabulated. That said, the fundamental design of the AutoMark appears to allow counties and the Secretary of State's office to accommodate those concerns.

As a related concern, we express opposition to the inclusion of any modem transmission device on precinct tabulators. The consensus of the organizations meeting on this issue is that there is a concern about both real security breaches as well as public perception. We believe that the hard / flash drives with the electronic tabulation and the paper ballots should be physically delivered to the central count location.

We continue to offer our assistance and advice on these matters to the Voting Systems and Procedures Panel.

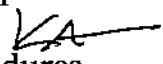
Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Feng", with a large, stylized loop at the end.

Kathy Feng  
Executive Director  
California Common Cause

# California Voter Foundation

June 15, 2005

TO: Secretary of State's Voting Systems and Procedures Panel  
FROM: Kim Alexander, President, California Voter Foundation   
RE: Diebold's voter verified paper trail equipment and procedures

On June 16, the Secretary of State's Voting Systems and Procedures Panel (VSPP) will consider certification of several Diebold Election Systems, Inc.'s voting equipment components and procedures.

I have reviewed the test reports and procedures, and am writing to bring the California Voter Foundation's (CVF) concerns to your attention. Our first concern is that the manual count language contained in Diebold's draft procedures is unsatisfactory. Secondly, we are concerned about the testing process for Diebold's equipment.

## **I. Manual count language in Diebold's draft procedures**

Diebold has supplied the Secretary of State with draft procedures for its TSX voting machine with the voter verified paper audit trail attachment. These procedures require several clarifications to ensure that the voter verified paper trail is used to perform the one percent manual count that is required by California law.

California's manual count law was first enacted in 1965, shortly after software first started being used in punch card voting to tabulate ballots. Election Code Section 15360 requires that:

"During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts should be less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official."

Election Code Section 336.5 provides the following definition for the manual count:

"One percent manual tally" is the public process of manually tallying votes in 1 percent of the precincts, selected at random by the elections official, and in one precinct for each race not included in the randomly selected precincts. This procedure is conducted during the official canvass to verify the accuracy of the automated count.

This "public manual tally" serves as a check of tabulation software to verify machine-tabulated results. With punch card and optical scan systems, a subset of the hard copy ballots are selected at random, then counted by hand in a public and open process, and the results are checked against those generated using the vote tabulation software.

This law has served California voters well for most of the past four decades by ensuring that software glitches, human error or attempted vote fraud do not result in erroneous vote totals. The manual count law provides a form of transparency in our voting process, which is crucial given that the software used to count ballots is proprietary and not open to public inspection.

However, for the past five years the manual count law has been subverted with the introduction of paperless, electronic voting machines. Counties using electronic voting machines do not have an independent audit trail they can use to verify the accuracy of their software vote counts. Instead, and in violation of the manual count law, these jurisdictions have printed out paper ballot images of electronic ballots after the voters have voted and the polls have closed. If an electronic ballot was not properly recorded or stored in the first place, these electronic ballot image printouts will not detect this error, since they originate from the same data source to which they are being compared. This procedure also means that election officials are relying one hundred percent on their vendor's proprietary software to record and count votes.

Fortunately, California's legislature unanimously passed a bill last year, SB 1438, to require that all electronic voting machines produce a voter verified paper audit trail of every electronic ballot cast. The purpose for this paper record is two-fold: to give an individual voter confidence that his or her own ballot was properly recorded; and to give election officials a meaningful audit trail they can use to verify the accuracy of software vote counts and satisfy the manual count law.

Unfortunately, some counties may be hoping to continue the meaningless practice they initiated when electronic voting machines were first introduced in California. The California Voter Foundation strongly urges the VSPP to require Diebold and other vendors to use procedures that specify the voter verified paper trail be used to satisfy the manual count law.

Diebold's draft procedures, dated June 2005, are unclear on this matter.

- On page 36, #7, "Official Canvass and Post-Election Procedures", the procedures currently say that one purpose of the official canvass is to

"Verify the accuracy of the computer count by manually recounting the voter ballots from at least one percent of the voting precincts and comparing the manually-tallied results to the computer generated results."

Note that the procedures say “manually recounting the voter ballots”, not “manually recounting the voter verified paper trail”, which is the only audit trail that can be used to satisfy the manual count. Using the vague term “voter ballots” leaves it up to counties to interpret whether this means an electronic ballot image or a voter verified paper trail. CVF urges the Secretary of State to replace the language “voter ballots” with the language “voter verified paper audit trail”.

- On page 37, #7.4, “Automatic Manual Recount in One Percent of the Precincts”, the procedures currently say:

7.4.2 Precincts selected at random pursuant to Elections Code section 15645 shall be chosen by an individual who is designated by the responsible elections official and who is not the same person responsible for programming the electronic ballot. Selected precinct numbers shall not be revealed to the persons responsible for programming the electronic ballot until the semi-official canvass is complete. For the one percent manual tally, the AVPM audit trail ballots tabulated by hand and verified against official tally.

Note that the last sentence of this procedure is not actually a complete sentence and is missing the verb that would determine whether the voter verified paper trails are required to be used for the manual count. CVF recommends that you replace the last sentence in 7.4.2 with the following:

“For the one percent manual tally, the AVPM audit trail ballots must be tabulated by hand and verified against the official tally.”

CVF strongly urges you to make it clear in Diebold’s procedures, as well as in other vendors’ procedures, that the voter verified paper trail must be used to perform the one percent manual tally. Otherwise the voter-verified paper trail is practically meaningless, and the one percent manual tally is totally meaningless. If the paper audit trail that the voter verified is not used to verify the overall election results, then it will be possible for the paper record to reflect one set of votes while the electronic record reflects a different set of votes without ever being detected.

We know elections aren’t perfect. We know software is not perfect. There have been plenty of examples of vote counting problems in recent years in California, of glitches and human error occurring. It is inevitable that there will be problems. The real challenge is to ensure our system is transparent and accountable so that when problems inevitably occur they can be detected and corrected.

## **II. Diebold testing process**

CVF is concerned that Diebold’s new equipment has not been properly tested by the Secretary of State’s office. Recent news articles and documents released by the Secretary of State show that the voter verified paper trail unit Diebold

supplied to the State of California for testing was not the same unit supplied to federal labs for testing. This is not the first time that Diebold has supplied different voting system components to state and federal authorities for testing and qualification.

In December 2003, the Secretary of State's office discovered that the TSX had not been federally qualified prior to state certification, as required under California's certification procedures. The Secretary of State's office also discovered that Diebold had installed uncertified versions of hardware or software in all 17 of its California client counties. Even after these problems came to light, Diebold attempted to win state certification of additional components, telling the Secretary of State that those components were in the process of federal qualification, which turned out to be false. According to the Secretary of State's Staff Report on the Investigation of Diebold Election Systems, Inc., published April 20, 2004:

"Less than a month before the March Primary, after repeated assurances to the contrary, this office learned that Diebold was no longer pursuing federal ITA approval of the software and firmware installed on California voting machines. Rather, Diebold had instructed the ITA to test a newer version of both software and firmware." (Page 2).

Based on Diebold's prior practices in California's certification process, this is a company that does not deserve to be given the benefit of the doubt. Why didn't Diebold, once it had a newer model of its printer unit available, supply that unit to the Secretary of State for testing rather than allow the Secretary of State to continue testing a different unit?

The recent revelations about the testing of Diebold's equipment is another example of Diebold playing fast and loose with California's certification process. Diebold's past transgressions in this area resulted in widespread equipment failure in several California counties during the March 2004 election that left thousands of California voters disenfranchised.

Given the history of this company, it is imperative that the Secretary of State's office guarantee that every step and requirement of the certification process is carefully followed so that voters in our state can have confidence in election results produced from Diebold equipment.

Cc: California Secretary of State Bruce McPherson